

ESTTA Tracking number: **ESTTA63650**

Filing date: **01/25/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Red Head, Inc. d/b/a Cabo Wabo Enterpris
Granted to Date of previous extension	02/19/2006
Address	P.O. Box 5046 Berkeley, CA 94705 UNITED STATES
Attorney information	Janet Shih Hajek Greenberg Traurig, LLP 1750 Tysons Boulevard Suite 1200 McLean, VA 22102 UNITED STATES hajekj@gtlaw.com Phone:(703) 903-7554

### Applicant Information

Application No	78468593	Publication date	08/23/2005
Opposition Filing Date	01/25/2006	Opposition Period Ends	02/19/2006
Applicant	Bunte, Brady 108 Pacifica #300 Irvine, CA 92618 UNITED STATES		

### Goods/Services Affected by Opposition

Class 033. All goods and sevicees in the class are opposed, namely: ALCOHOLIC BEVERAGES, NAMELY TEQUILA	
Related Proceedings	Serial No. 78/551,176
Attachments	caboazul.pdf ( 9 pages )
Signature	/jsh/
Name	Janet Shih Hajek
Date	01/25/2006

In the matter of  
Trademark Application Serial No. 78/468,593  
Published: August 23, 2005  
Mark: CABO AZUL (Int'l Class 33)

Opposition No. \_\_\_\_\_

1. Opposer, Red Head, Inc., d/b/a Cabo Wabo Enterprises (hereinafter “Opposer”) is a California Corporation with a mailing address at P.O. Box 5046, Berkeley, California 94705. Opposer is wholly-owned by Sammy Hagar (“Hagar”).

2. Upon information and belief, Applicant, Brady Bunte (hereinafter “Applicant”) is an individual located at 108 Pacifica #300, Irvine, California 92618.

3. Hagar is a well-known singer, songwriter, and performer, who has recorded and released numerous successful albums, both alone and as part of various musical groups.

4. Hagar wrote the song “Cabo Wabo” in or about 1987 with Eddie Van Halen, and coined the phrase “Cabo Wabo” in connection therewith. The song originally appeared on the 1988 Van Halen album *OU812*, and also appears in the Van Halen box set *Van Halen Box Set: 1986 - 1993*.

5. In 1990, Hagar opened his first bar and restaurant -- the world-famous Cabo Wabo Cantina -- in Cabo San Lucas, Mexico. As a popular tourist destination, visitors from around the world, including the United States, patronize the Cabo Wabo Cantina. Hagar immediately began selling clothing and other merchandise related to his restaurant in the United States.

6. On or about January 1997, Hagar launched his premium tequila under the mark CABO WABO. Cabo Wabo tequila has been recognized as one of the best tequila products on the market. In both 2000 and 2001, Cabo Wabo tequila received “Best in Show” and “Taste Award Gold” medals from the American Tasting Institute.

7. On or about March 1999, Hagar formed Red Head, Inc. and began to consolidate his business efforts under his company. Red Head, Inc. is registered to do business as Cabo Wabo Enterprises.

8. On or about May 2004, Opposer opened the first Cabo Wabo Cantina in the United States at Lake Tahoe in Nevada.

9. Opposer owns numerous registrations and applications for the CABO WABO mark and other marks which incorporate the term “CABO” (altogether, hereinafter the “CABO Marks”). Specifically, a number of Opposer’s registrations and applications for the CABO Marks are for tequila products and tequila-related products and services, including:

<b>MARK</b>	<b>GOODS/SERVICES</b>	<b>REG./APP. NO.</b>
CABO WABO (& Design)	Tequila	2,830,521
CABO WABO	Tequila	78/547,568
CABO CANTINA	Tequila	78/334,484
CABO WABORITA	Prepared alcoholic cocktails	2,971,276
CABO-ME-CRAZY	Prepared alcoholic drink	2,892,451
CABO WABO MELTDOWN	Prepared alcoholic cocktails and mixes	78/228,418
CABO CANTINA	Retail store services and on-line retail store services featuring a wide variety of goods namely, . . . tequila and alcoholic beverages, prepared alcoholic cocktail, powders and mixes used in the preparation of alcoholic cocktails, . . . providing consumer information in the field of tequila and clothing via the Internet	78/334,480
CABO WABO CANTINA	Retail store services and on-line retail store services featuring a wide variety of goods namely, . . . tequila and alcoholic beverages, prepared alcoholic cocktail, powders and mixes used in the preparation of alcoholic cocktails, . . . providing consumer information in the field of tequila and clothing via the Internet	76/235,335

10. Opposer’s CABO Marks are also used for various other goods and services, including:

<b>MARK</b>	<b>GOODS/SERVICES</b>	<b>REG./APP. NO.</b>
CABO WABO	Non-alcoholic margarita mix; and nonalcoholic mixes for cocktail drinks	78/386,235
CABO WABO CERVEZA	Beer	76/271,473
CABO WABO NATURAL BLONDE	Beer	76/285,379
CABO WABO PLATINUM BLONDE	Beer	76/285,138
CABO WABO CANTINA	Restaurant and bar services; providing banquet and social function facilities for special occasions.  Nightclub services; providing entertainment services namely, news information, and multi-media content regarding music performing artists, via the Internet.	76/977,900
CABO WABO BEACH CLUB	Restaurant, bar and resort hotel services	78/457,922
CABO WABO LIGHTHOUSE	Restaurant, bar and nightclub services	76/240,450
CABO CANTINA	Restaurant and bar services	78/334,473
CABO WABO	Beverage glassware, foam drink holders, cocktail shakers, etc.	78/351,348
CABO WABO	Frozen prepared poultry, meat, and seafood; frozen appetizers consisting primarily of vegetables, meat, poultry, seafood, and/or cheese; frozen appetizers, namely breaded and coated vegetables, meat, poultry, seafood, and/or cheese combinations; frozen dinners consisting primarily of vegetables, meat, poultry, seafood, and/or cheese; refried beans; canned pinto beans; canned black beans; canned jalapenos; canned chiles; guacamole; cheese dips; snack dips; and soup	78/386,206
CABO WABO	Frozen dinners and side dishes consisting primarily of rice; frozen entrees featuring burritos, enchiladas, tacos, tamales, quesadillas, and fajitas; corn and taco chips; tortilla chips; salsa; pico de gallo; picante sauce; tortillas; taco shells; seasoning mixes for tacos, enchiladas, burritos, fajitas, and chili; hot sauce; rice; and prepackaged flavored rice	78/386,221
CABO CANTINA	Resort, lodging and hotel services	78/334,483
CABO WABO CANTINA	Resort, lodging and hotel services and travel agency services namely, making reservations and booking for temporary lodging	76/235,335

<b>MARK</b>	<b>GOODS/SERVICES</b>	<b>REG./APP. NO.</b>
CABO CANTINA	Providing live musical performers; online entertainment services . . .	78/334,476
CABO WABO BEACH CLUB	Entertainment services, namely, providing live musical entertainment in the nature of live performances by musical bands and artists; providing facilities for swimming, tennis, water sports, volleyball, racquetball, fitness and recreation activities; providing services, namely instruction in and organization of swimming, tennis, water sports, volleyball, racquetball, fitness and recreation activities; organization of games; organization of competitions in the nature of musical performance, swimming, tennis, water sports, volleyball, racquetball, fitness and recreation activity competitions; casinos and nightclub services; providing gaming facilities and amusement arcades	78/457,913
CABO WABO MELTDOWN	Entertainment services, namely indoor and outdoor live concert events featuring a variety of musical groups and entertainers	78/228,420
A SHOT AT THE CABO WABO	Entertainment services	2,908,848
CABO WABO (& Design)	Clothing	76/372,662
CABO CANTINA	Clothing	78/334,469
CABO WABO CANTINA (& Design)	Clothing	2,657,637
CABO WABO BEACH CLUB	Clothing	78/457,924
CABO WABO MELTDOWN	Clothing	78/228,422
A SHOT AT THE CABO WABO	Clothing	2,911,300
CABO WABO	Sunglasses	2,802,283
CABO WABO	Clocks	78/351,346
CABO WABO BEACH CLUB	Towels, . . . kitchen linens and dish cloths, etc.	78/457,916

11. Opposer has, since at least as early as 1990, owned the trademark CABO WABO and has used it continuously in interstate commerce. Moreover, Opposer has specifically used the CABO WABO trademark on and in connection with tequila in interstate commerce on a continuous and exclusive basis since at least as early as 1997.

12. Long prior to the filing of Application Serial No. 78/468,593, Opposer has built up valuable goodwill and reputation in the CABO Marks by virtue of its investment of a great deal of time and money in promoting the goods and services under the CABO Marks and trade names and the CABO Marks and trade names have become famous among purchasers and users of Opposer's various products and services, including tequila, alcoholic beverages, restaurant and bar services, and related goods and services.

13. As a result of Opposer's continuous advertising, promotion, sale, distribution and provision of its tequila, alcoholic beverages, restaurant and bar services, and related goods and services, the CABO Marks have become famous among purchasers of such products and services and the CABO Marks have acquired a strong secondary meaning identifying Opposer and its products and services sold, offered, provided and distributed under the CABO Marks. Opposer continues to use and promote these goods and services under the CABO Marks.

14. The CABO Marks have both national and international prominence due to their connection with Hagar and the extensive advertising and marketing conducted by Opposer to promote the goods and services sold, offered, promoted and distributed under the CABO Marks.

15. By virtue of Opposer's continuous, exclusive and widespread use of the CABO Marks, Opposer is entitled to a broad scope of protection therefor.

16. Application Serial No. 78/468,493 for the mark CABO AZUL is based on an intention to use the mark in commerce.

17. Upon information and belief, neither Applicant nor any predecessor or related company to Applicant made actual use of the mark shown in Application Serial No. 78/468,493 prior to Opposer's first use of the CABO WABO mark.

18. Upon information and belief, neither Applicant nor any predecessor or related company to Applicant made actual use of the mark shown in Application Serial No. 78/468,493 prior to Opposer's first use of the CABO WABO mark on and for tequila.

19. Applicant seeks to register the mark CABO AZUL in International Class 33 for use in connection with "alcoholic beverages, namely tequila" (hereinafter "Applicant's Goods").

20. Applicant's use or intended use of the CABO AZUL mark in connection with the goods identified in the application is without Opposer's consent or authorization.

21. Applicant's Goods are identical to the goods identified in certain of Opposer's trademark registrations and applications, including Reg. No. 2,830,521 and App. Serial Nos. 78/547,568 and 78/334,484. Applicant's Goods are also closely related to the goods identified in Opposer's Reg. Nos. 2,971,276 and 2,892,451, and App. Serial No. 78/228,418.

22. If Applicant were permitted to register and use the CABO AZUL mark, as specified in its application, confusion in the trade and in the minds of the public resulting in injury to the Opposer would likely result and the significant investment Opposer has made in its well-known CABO Marks would be diminished. Persons familiar with Opposer's CABO Marks would likely mistake Applicant's Goods for those provided by Opposer or at least believe Applicant's Goods were sanctioned, authorized, licensed by or



related to Opposer. Furthermore, any defect, objection or fault found with Applicant's Goods marketed under the CABO AZUL mark would likely reflect upon and injure the reputation Opposer has established with respect to the services and/or products sold under the CABO Marks.

23. Upon information and belief, Opposer has clear priority over Applicant's desired CABO AZUL mark. Opposer's date of first use in interstate commerce of the CABO Marks is at least as early as 1990, which precedes Applicant's 2004 filing of Intent-to-Use Application Serial No. 78/468,593.

24. Upon information and belief, Opposer is the exclusive owner of all trademark registrations for marks incorporating the term CABO for tequila, tequila-flavored products, and tequila-flavored services. Furthermore, upon information and belief, there are no other tequila products sold in the U.S. under a mark that consists of or incorporates the term CABO.

25. Applicant's use and/or registration of the CABO AZUL mark in connection with Applicant's Goods is likely to cause confusion, mistake, or deception with Opposer's CABO Marks within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

26. Applicant's use or proposed use of the CABO AZUL mark in connection with Applicant's Goods falsely suggests a connection with Opposer within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).

27. If Applicant were granted the registration herein opposed, it would cause dilution of the distinctive quality of Opposer's well-known CABO Marks.

28. Registration of the mark CABO AZUL by Applicant would provide Applicant with prima facie evidence of its validity and its exclusive rights therein. Such registration would be a source of damage and injury to the Opposer.

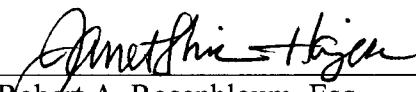
29. Opposer has the right to continue to use the CABO Marks in commerce without interference by Applicant, and without a likelihood of confusion, mistake or deception.

WHEREFORE, Opposer prays that this Notice of Opposition be granted, that Serial No. 78/468,593 be rejected, and that Applicant be denied registration.

Please charge Deposit Account 50-0653 for the filing fee in the amount of \$300.00.

Dated: January 25, 2006

Respectfully submitted,

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